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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,000	04/23/2004	Stephan Ruppert	P25114	7654
7055 7590 02/27/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		02/27/2007	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary

Application No.

10/830,000

Applicant(s)

RUPPERT ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-51 is/are pending in the application.
- 4a) Of the above claim(s) 18-25, 27, 41-43, 50 and 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-17, 26, 28-40 and 44-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/4/05, 10/12/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

In response to restriction requirement made on January 19, 2007, applicants have elected group I, claims 13-49, with traverse, in the reply filed on January 30, 2007. As for species elections, applicants have elected **sodium lauryl ether sulfate** as the detergent surfactant species having an HLB value of higher than 15. Applicants also indicated that **claims 13-17, 26, 28-40, and 44-49** read on the elected species. Thus, these claims are examined on the merits in this Office action. Claims 18-25, 27, 41-43, 50, and 51 are withdrawn from consideration.

Applicant's reason for traverse to the restriction requirement was fully considered, but is not persuasive. The traversal is on the ground(s) that allegedly there is no serious burden to examiner all of the Groups I to III. Applicants argue that the inventions of the Groups I –III all relate to a cleansing emulsion of claim 13, and thus the search for the inventions should "significantly overlap". Applicants have not shown any reason or support how the methods of Group II and III (treating or prophylaxis of inflammatory skin condition/protecting sensitive and dry skin) relate to the cleansing composition of Group I. As indicated in the restriction requirement, the causes for "inflammatory skin condition" are unpredictable. Applicants have not shown how the claimed prophylactically treating inflammatory skin condition would relate to the detergent composition as claimed in Group I. Examiner maintains the position that searching the method claims would impose undue burden.

The requirement is still deemed proper and is therefore made FINAL.

Applicants are reminded that, should the product claims be subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

Claim Objections

Claims 28 and 29 are objected to because of the following informalities: The recitations of the compound "2-ethylhexyl isostearate" in the claims are all inconsistent. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 13-17, 26, 30, 32-35, and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Touzan et al (US 6210656 B1).

Touzan teaches a self-foaming cleansing cream formulation comprising (a) 1.5 % by weight of sodium laureth sulfate; (b) 10 % by weight of mineral oil and 10 % of octyl palmitate; (c) 3 % by weight of glycerol (active agent); and (d) 0.6 % by weight of Carbomer (acrylic acid polymer) and 0.2 % by weight of acrylate/C10-C30 alkylacrylate crosspolymer (Pemulen). See Example 3; col. 2, lines 26 – 56; col. 3, lines 44 – 52; instant claims 13-17, 26, 33-35, 45, and 49. Sodium laureth sulfate meets claims 14 and 15, as admitted by applicants. Example 1, which is also a self-foaming cleansing cream comprising 1 % of sodium laureth sulfate, teaches using 6 % of glycerol. See instant claims 30 and 32. In claims 45-48, the terms “bath” “shower bath”, “tub bath”, and “hair shampoo” denote the intended future use, and does not further define the structural limitation of the composition of instant claim 13. Thus no patentable weight is given to these terms. See MPEP § 2111.02.

While Touzan's formulation in Example 3 contains 20 % of oil, the specification teaches in col. 5, lines 47 – 61 that the composition may comprise up to 50 % of an oil phase. A preferred weight range for the oil phase is from 5-40 %.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the disclosed formulation of Touzan by adjusting the weight amount of the oil phase, as motivated by the teaching in the specification, because the specification teaches that the composition may contain up to 50 %, and preferably by 40 % of the total weight of the composition. The skilled artisan would have had a

reasonable expectation of successfully producing a similarly stable foaming composition.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Touzan et al (US 6210656 B1) as applied to claims 13-17, 26, 30, 32-35, and 45-49 as above, and further in view of Schönrock et al. (US 5876737).

Touzan, discussed above, lacks the oil components of instant claims 28 and 29. The reference teaches that the formulation is suitable for sensitive skin. See col. 7, lines 3-5.

Schönrock teaches that the oils of instant claim 28 are advantageously used in formulating cosmetic emulsions, oleogels, hydrodispersions or lipodispersions for treatment of skin irritation. See col. 9, line 33 – col. 10, line 11. The reference also teaches, “mixtures of C12-15 alkyl benzoate and 2-ethylhexyl isostearate, mixtures of C12-15 alkyl benzoate and isotridecyl isononanoate, and mixture of C12-15 alkyl benzoate, 2-ethylhexyl isostearate and isotridecyl isononanoate are particularly advantages.” See col. 10, lines 13-16; instant claim 29. Schönrock also teaches that these can be used in formulations for cleansing the skin or hair. See col. 10, line 66 – col. 11, line 3.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of Touzan by using the oils of Schönrock, as motivated by the latter reference, because 1) both Touzan and Schönrock teach topical cleansing formulations and are concerned with irritable skin; and 2) Schönrock teaches particular types of oils that are suitable for a formulation that is used for

Art Unit: 1617

treatment of skin irritation. The skilled artisan would have had a reasonable expectation of successfully producing a similarly stable and safe cleansing composition.

Claims 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Touzan et al (US 6210656 B1) as applied to claims 13-17, 26, 30, 32-35, and 45-49 as above, and further in view of Giacomoni (US 7083799 B1).

Touzan, discussed above, further teaches using the cleansing composition for sensitive skin. See col. 7, lines 3-5.

The reference fails to teach NO (nitric oxide) -synthase inhibitors. See instant claim 31.

Giacomoni teaches using an effective amount of nitric oxide synthase inhibitors in a cosmetic composition such as foam, cleansing creams for skin. See abstract; col. 4, lines 40-54. The reference teaches that NO-synthase inhibitors reduce the skin irritation effect of topically applied cosmetic or pharmaceutical substances, such as ionic detergents. See col. 3, lines -12.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of Touzan by incorporating NO-synthase inhibitors, as motivated by Giacomoni, because 1) Touzan is concerned with treating sensitive skin; and 2) Giacomoni teaches that skin irritant effect of ionic detergents can be further reduced by adding NO-synthase inhibitors to topical compositions. The skilled artisan would have had a reasonable expectation of successfully producing a stable cleansing composition which does not irritate skin, since Giacomoni teaches that NO-synthase inhibitors are used in emulsions and foam compositions.

Claims 36-40 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Touzan et al and Giacomoni as applied to claims 13-17, 26, 30-35, and 45-49 as above, and further in view of Dixon et al. (US 5869070).

Although Touzan limits the amount of surfactants to 2 % for the users of sensitive skin, Giacomoni teaches the method of reducing skin irritation caused by detergents.

Dixon teaches a skin cleansing and moisturizing composition comprising about 5-30 parts of lipid skin moisturizing agents; 0.3-5 parts of a water dispersible gel forming polymer; and from about 5-30 parts of a synthetic surfactant; and water. Examples 1 and 2 on column 17 show stabilized polymeric gels comprising 5.5 % by weight of sodium laureth sulfate. See instant claim 36. The reference also teaches using Carbopol acrylic polymers. See col. 15, line 17.

Examiner views that the combined teachings of the references suggests that it would have been obvious that a skilled artisan would have been motivated to modify the teaching of Touzan by increasing the amount of sodium laureth sulfate, as motivated by Dixon, because 1) Giacomoni suggests that the addition of NO-synthase inhibitor permits the use of a higher amount of a foaming surfactant; and 2) Dixon teaches a similar polymeric oil-in-water cleansing composition with up to 5.5 % of the same foaming surfactant that is used in Touzan. The skilled artisan would have had a reasonable expectation of successfully producing a stable cleansing composition with higher foaming properties that is still suitable for sensitive skin.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

Art Unit: 1617

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-17, 26, 30-40, and 44-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 7-21, 26-29, 31-34, and 40-44 of copending Application No. 10/830,001.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of compositions are directed to cleansing emulsion composition comprising sodium laureth sulfate, anionic polymers of acrylic acid or esters, oil phase, and water in overlapping limitations. See '001 claims 1-5, 7, 8; instant claims 13-17, 26, 33-40, and 44. The oils of instant claims 28-29 are defined in the '001 specification, p. 10, [0059]-[0060], as the oils of the copending claims 1 (ii). The at least one active ingredient of claim 26 of the '501 application is also defined in specification, p. 19, [0096]-[0098]. See instant claims 30 and 31. The applications of the compositions are also the same. See '001, claims 40-42; instant claims 48-48. With

Art Unit: 1617

respect claim 49, it is viewed that the compositions of the two applications obviously have the same texture, since they comprise the same components within the overlapping amounts.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

No claims are allowed.

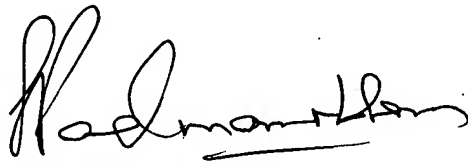
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu
Patent Examiner



STEVEN P. MANAHAN
SUPERVISORY PATENT EXAMINER